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ONE HUNDRED EIGHTH CONGRESS

# Congress of the United States

## House of Representatives

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June 3, 2004

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Mr. Thomas J. Harrington  
Deputy Assistant Director  
Counterterrorism Division  
Federal Bureau of Investigation  
935 Pennsylvania Avenue, NW  
Washington, DC 20535

Dear Mr. Harrington:

Thank you again for your participation in the May 18, 2004 legislative hearing, concerning H.R. 3179, the "Anti-Terrorism Intelligence Tools Improvement Act of 2003." The Honorable John Conyers, Jr. has requested your response to the following enclosed questions.

Please send your responses to the Subcommittee on Crime, Terrorism, and Homeland Security, Attn: Emily Newton, 207 Cannon House Office Building, Washington, DC 20515 and because of the uncertainty of mail delivery to the Capital, by telefax at (202) 225-3737 no later than *June 18, 2004*. If you have any further questions or concerns, please contact Emily Newton at (202) 225-2421.

Thank you again for your testimony and assistance in this regard.

Sincerely,



Howard Coble  
Chairman  
Subcommittee on Crime, Terrorism, and Homeland

Security  
Enclosure  
HC/esn

F. JAMES SENSENBRENNER, JR., Wisconsin  
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LINDA T. SANCHEZ, California

June 3, 2004

The Honorable Daniel J. Bryant  
Assistant Attorney General  
United States Department of Justice  
Washington, DC 20528

Dear Mr. Bryant:

On behalf of the Committee on the Judiciary's Subcommittee on Crime, Terrorism, and Homeland Security, I want to express our sincere appreciation for your participation in the May 18, 2004 hearing concerning H.R. 3179, the "Anti-Terrorism Intelligence Tools Improvement Act of 2003." Your testimony was informative and will assist us in future deliberations on the important issues addressed during the hearing. I am enclosing follow-up questions to which I would appreciate your responses.

Also, please find a **verbatim** transcript of the hearing enclosed for your review. The Committee's Rule III (e) pertaining to the printing of transcripts is as follows:

*The transcripts...shall be published in verbatim form, with the material requested for the record...as appropriate. .... Any requests... to correct any errors, other than errors in the transcription, or disputed errors in the transcription, shall be appended to the record, and the appropriate place where the change is requested will be footnoted.*

Please send your response to the Subcommittee on Crime, Terrorism, and Homeland Security, Attn: Emily Newton, 207 Cannon House Office Building, Washington, DC 20515 and because of the uncertainty of mail delivery to the Capital, by telefax at (202) 225-3737 no later than *June 18, 2004*. If you have any further questions or concerns, please contact Emily Newton at (202) 225-2421.

Thank you again for your testimony and assistance in this regard.

Sincerely,

*Howard Coble*

Howard Coble  
Chairman

Subcommittee on Crime, Terrorism, and Homeland Security

Enclosure

HC/esn

QUESTIONS SUBMITTED BY REP. JOHN CONYERS, JR.

Please answer the following questions for the record for the Crime, Terrorism, and Homeland Security Subcommittee hearing on H.R. 3179, the "Anti-Terrorism Intelligence Tools Improvement Act." If the response to a question is classified, please submit the response under separate, classified cover. Also, if extra time is required to collect the information needed to respond, please so inform the Committee and respond as soon as is practicable.

For Daniel J. Bryant (Assistant Attorney General, Office of Legal Policy)

1. Section 2 of H.R. 3179 would impose criminal penalties upon persons who receive National Security Letters, including librarians and bookstore owners, and violate the gag orders contained therein. You support this proposal on the grounds that making such information public could jeopardize on-going investigations.
  - (a) Is it not true that your justification could be used as a rationale for closing all court proceedings, providing no evidence to defendants, and allowing no public disclosure of court proceedings?
  - (b) Would the Department similarly support the imposition of criminal penalties against Department officials who violate judicial non-disclosure orders in terrorism cases? If not, why not? On December 16, 2003, Judge Gerald Rosen of the U.S. District Court for the Eastern District of Michigan ruled that the Attorney General had twice violated a judicial order prohibiting government and defense lawyers in the case of *United States v. Koubriti* from making public statements regarding the case.
  - (c) In determining whether a person has violated the law by "knowingly" disclosing the receipt of an NSL, must the person know he is prohibited from disclosing or must he simply know he made the disclosure?
  - (d) Would the Department support limiting penalties for disclosure of NSL's to only those situations in which it can establish that harm to the national security resulted from the disclosure? If not, why not?
2. With respect to section 4, the "lone wolf" provision, would the Department object to an alternative that creates a presumption that an individual planning a terrorist attack is an agent of a foreign power, particularly if that helped to ensure that FISA remains constitutional by retaining the requirement of a connection to a foreign power?
3. Please provide an example of a particular instance in which the Department was unable to obtain a surveillance order for a suspected terrorist because it could not establish that the target was a foreign power or an agent of a foreign power. If such cases exist, please explain for each such case why the Department was unable to obtain a title III surveillance order.

4. Prior proposals have extended the "lone wolf" provision to cover both U.S. persons and non-U.S. persons. Although section 4 of H.R. 3179 applies only to non-U.S. persons, I am concerned that if we pass this provision, the FBI and Justice Department will return to this Committee and ask that we extend it to U.S. persons. Can I get your commitment that the Department will not come back here and ask for that?
5. Section 5 of H.R. 3179 permits the Department to make *ex parte* requests of courts for authorization to withhold classified information from defendants.
  - (a) Since September 11, 2001, where the Department has sought the ability to withhold classified information from defendants, in how many instances have the courts denied the government the ability to make such requests *ex parte*? For each such instance, what reason did the judge give for denying the request?
  - (b) In how many such instances have the courts allowed the government to make such requests *ex parte*?
6. Section 5 of H.R. 3179 permits the Department to request orally that classified information be protected. Why is it necessary for the Department to request protection of classified information under Classified Information Procedures Act orally? Is it not true that a classified or redacted written request could be maintained in the case file so that there is a clear and complete record of what transpired?
7. Your testimony indicates that section 6 of H.R. 3179 would expand the exception that allows the government to withhold notice of FISA evidence in alien terrorist removal proceedings to all other immigration proceedings. The existing exception (8 U.S.C. § 1534(e)) specifically restricts notice and disclosure of FISA information "if disclosure would present a risk to the national security of the United States."
  - (a) Since September 11, 2001, how many immigration proceedings have occurred where the government had information on an alien obtained via FISA (regardless of whether the evidence was used)?
  - (b) In how many of such cases was there a national security nexus? Please provide detailed information regarding the national security nexus for each case.
  - (c) In how many of such cases was there a terrorist activity nexus? Please provide detailed information regarding the terrorist activity nexus for each case.
  - (d) Please answer the following question with a number or percentage. In how many of such cases was there no national security or terrorist activity nexus?

- (e) Would the Department support an amendment that limits the exemption proposed in section 6 to those situations in which a judge determines that disclosure "would present a risk to the national security of the United States?" If not, why not?
- (f) If section 6 were to be enacted, please explain how a person facing detention or removal could challenge the lawfulness of FISA surveillance used in support of that detention or removal.
8. With respect to the changes proposed by section 6 of H.R. 3179, please provide any specific examples where a defendant has jeopardized a case because he or she was allowed to petition the court to have access to FISA evidence. If such cases exist, please explain how they were resolved.
9. Your testimony indicates that if section 6 of this bill became law, the government would still be required to disclose information it plans to use at immigration proceedings to aliens if such disclosure is "otherwise required by law." Please list and explain all legal obligations that could require the disclosure of FISA evidence in immigration proceedings and what, if any, limitations exist on the Department's obligation to make such disclosures.
10. Your testimony says there are cases where the Department, in the interest of protecting on-going investigations, has decided not to use FISA evidence in immigration proceedings.
- (a) How many such proceedings have there been since September 11, 2001? How many persons were involved? Describe all such cases.
- (b) How many of such persons were found deportable on immigration charges?
- (c) On what grounds were they deported?
- (d) If any of such persons were deported, doesn't that mean that current law was sufficient and the FISA evidence was not necessary to deport the individual?
- (e) If there are cases where the person was not deported, were they released or are they in detention on immigration or other grounds?
- (f) Please provide detailed information on those cases where a deportation of a dangerous person was thwarted because FISA evidence was not used.
11. Please provide the names and the charges filed against the 310 individuals you referred to as "being charged with criminal offenses as a result of terrorism investigations." Please also provide the districts in which those charges are pending. Also please submit a copy

of all indictments, plea agreements, and guilty verdicts for such persons.

12. Please provide detailed information regarding the 179 convictions you have obtained "as a result of terrorism investigations." Include the charge against each person, the disposition of each charge, the charge(s) for which each person was convicted, and the sentence imposed for each person for each charge.
13. At the May 18, 2004 hearing, in discussing whether National Security Letters violate the Fourth Amendment rights of a person whose information is sought, you stated:  
"Terrorists have no such Fourth Amendment right."
  - (a) Is it not correct that, at the stage of an investigation when information about a person is sought through an NSL, that person has not yet been convicted of a terrorist offense?
  - (b) Is it the Department's position that a person who is suspected or accused of a terrorist offense, but not convicted of one, has no Fourth Amendment rights?
14. At any time during the period between and including September 25, 2001, and October 12, 2001, did anyone in the Department ever indicate to any Member of Congress or their staff that revising the PATRIOT Act (as reported by the Judiciary Committee) before it was considered by the Rules Committee or the full House would "benefit the Republican Party politically" (or words to that effect)?
15.
  - (a) Does the Department believe that an essential component of the war on terrorism is keeping weapons out of the hands of terrorists?
  - (b) Is it not true that extending the assault weapons ban would help keep weapons out of the hands of terrorists?
  - (c) Is it not true that the Department could better track terrorists if terrorists could be searched in NICS? Has the Department sought legislation from Congress to extend the assault weapons ban and clarify NICS? If not, why not?

For Thomas J. Harrington (Deputy Assistant Director, Counterterrorism Division, FBI)

16. Please answer the following questions with numbers. How many National Security Letters have been issued since September 11, 2001? How many were for terrorism investigations? How many were for intelligence activities?
17. What language is used to notify National Security Letter recipients that they may not disclose the fact that they received the NSL and that disclosure is a violation of federal law?



18. Since September 11, 2001, in how many instances have recipients of National Security Letters failed to comply with the gag order? In how many of those cases did you have evidence that the disclosure was committed with the intent to obstruct an investigation or judicial proceeding?
19. Please answer the following question with a number. Since September 11, 2001, in how many instances have recipients of National Security Letters failed to turn over the requested information?
20. Section 505 of the USA PATRIOT Act expanded the authorization for National Security Letters by removing the requirement of individualized suspicion.
  - (a) Is the FBI using this or any other authority to issue NSL's that request entire databases? If so, please list the statutory authority used.
  - (b) If so, what types of databases are being sought? Also, if any NSL's were used to obtain computer databases, please so indicate and give the size of each database in terms of computer memory used and number of records contained therein.